

United States v. Robles-Ayala, No. 06-30039

SEP 12 2006

CALLAHAN, Circuit Judge, dissenting:

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

I respectfully dissent.

The majority understates the district court's sentencing analysis in this case and overstates the requirements imposed by 18 U.S.C. § 3553(a). Robles-Ayala contends that his sentence is unreasonable because it does not comply with § 3553(a)'s mandate that the sentence be "sufficient, but not greater than necessary." He argues that because (1) he has been sufficiently deterred from future crime, (2) his motive for committing the illegal re-entry was to feed his family, and (3) he declared that he will "never come back," he is entitled to a lesser sentence; yet he fails to offer any evidence that demonstrates that his sentence was greater than necessary.

Robles-Ayala concedes that the district court began with the correct Guidelines Sentence, and the record makes clear that the court considered the § 3553(a) factors. During the sentencing hearing, the district judge stated:

[W]hen I make a determination about sentence in any case, I am obliged to take into account a substantial number of factors, all of which have been considered by me in making the decision about sentence in your case. I have calculated this guideline sentence range of 46 to 57 months, which is one of the considerations the court is to take into account, but it is advisory only I have also looked at the specific provisions of Title 18 Section 3553(a), which is a statute that governs the court's considerations in effecting sentence. . . . But in addition, I have looked at the nature and the circumstances of this offense, your history and your characteristics I

have an obligation to fix a sentence that will reflect the seriousness of the offense, that will promote respect for the law, that will provide just punishment for the offense, that will afford a basis for deterring others from engaging in this kind of conduct, and that will serve to protect the public from further criminal conduct of this sort by you. . . . And I have also the obligation to give consideration to the statutory factors in light of the directives of the United States Supreme Court in the case of [United States v. Booker].

This excerpt makes clear that the district court considered the circumstances of the offense, the tenets of punishment, and the § 3553(a) factors in its ruling.

This is all that is required. Indeed, the district court need not specifically address each § 3553(a) factor, “but rather show[] that [it] considered the statutorily-designed factors in imposing a sentence.” *United States v. Diaz-Argueta*, 447 F.3d 1167, 1171 (9th Cir. 2006) (quoting *United States v. Knows His Gun*, 438 F.3d 913, 918 (9th Cir. 2006)).

The district court’s statements, in totality, provide a sufficient showing that there was adequate consideration given to all the § 3553(a) factors and that the sentence imposed was reasonable. *See Knows His Gun*, 438 F.3d at 919 (sufficient consideration was given to the § 3553(a) factors where the district court: (1) stated that a “sentence of 132 months ‘would meet the purpose of sentencing, which is punishment, deterrence, rehabilitation and community protection,’” (2) stated that it “‘considered the nature and circumstances of the instant offense’ and imposed a sentence that ‘accurately reflects the seriousness and detrimental effects of the

crime,” and (3) viewed the Guidelines as ““useful instruction”.”) When district judges give appropriate consideration to all of the § 3553(a) factors, we are not at liberty as appellate judges to second-guess the weighing of those factors – even if we might have given a different sentence. *Id.*

I would affirm the judgment.